

Claimant’s Guide to Appeals

This pamphlet will give you information on Appeal Tribunal hearing procedures.

Is it important that you appear at the hearing, no matter who filed the appeal? Yes. So that you can present your side of the case. If you do not appear at a hearing and you are the one who appealed, the appeal will be dismissed. If your former employer filed the appeal and you do not appear at the hearing, the Tribunal can only review those statements you have given the department previously against the sworn in person testimony of the employer witness. It is more likely than not that the Tribunal will rule against you. You should be prepared to discuss all issues identified on the determination under appeal.

Should you continue to file claims while your determination is under appeal? Yes. It is important that you continue to file while your appeal is pending and you remain unemployed. Should any level of appeal rule in your favor, you will be paid benefits only for the weeks for which you properly filed your claim.

Important Note: You must remember that if you are denied Unemployment Compensation at any level in the appeal process, you may have to pay back the benefits you have received.

Americans with Disabilities Act: NH Employment Security (NHES) complies with the Americans with Disabilities Act. Should you require special assistance due to a disability as defined in the act, to pursue your rights, please contact the Appeals Unit as soon as possible.

What if you need language translation assistance? If you need language translation assistance, notify the Appeals Unit immediately. The Appeals Unit will obtain an interpreter for you.

What if you need a sign language Interpreter if you are deaf or hard of hearing? If you are deaf or hard of hearing and need a sign language interpreter, notify the Appeals Unit immediately. The Appeals Unit will obtain an interpreter for you.

Is there someone who can help you with your appeal? Yes. NH Employment Security employs Claims Representatives who can help you prepare yourself for the appeal hearing at no cost to you. You may call them at 1-800-685-6588 or 603-228-4017, or 603-229-4438. Call them as soon as you file your appeal.

Do you need a lawyer? Each individual must make that decision for herself or himself. If the issues are complex, the other party has an attorney, or you think you may have difficulty presenting your case, you may wish to consult an attorney. If you intend to have an attorney represent you in the hearing, the attorney is required to file an appearance letter to the Appeals Unit. You should also contact the Appeals Unit as soon as you are aware that you will have legal representation as a delay in doing so will create a delay in scheduling your hearing.

The following agencies may assist in providing legal services to low-income people:

	NH Legal Assistance			
Manchester	668-2900	or	1-800-562-3174	
Claremont	542-8795	or	1-800-562-3994	
Portsmouth	431-7411	or	1-800-334-3135	
Littleton	444-8000	or	1-800-548-1886	

NH Bar Association: Lawyer Referral Service
229-0002
Disabilities Rights Center
1-800-834-172, FAX 225-2077

Assistance is available for hearings that will be held in Concord or Manchester from: The Civil Practice Clinic, Franklin Pierce Law Center at 225-3350.

Is this the only step you can take in the Appeal process? No. This is the first step. In most cases the appeal is resolved in the first step, the appeal to the Appeal Tribunal. This is the only step in which you can submit evidence and so it is very important to provide all your evidence at this step.

There are, however, four more levels of the appeal process in New Hampshire. The appeal process in this state is as follows:

1. Appeal Tribunal
2. Request for Reopening to the Commissioner
3. An appeal to the Appellate Board
4. Motion for Reconsideration addressed to the Appellate Board.
5. An appeal to the New Hampshire Supreme Court

There are specific time limits required in order to be considered timely for the filing of an appeal in each of the above steps.

The Appeal Tribunal: What do you do when you get a Notice of Hearing? Read the Notice of Hearing. The *Notice of Hearing* will provide you with important

information about the time, date and place of the appeal hearing. It is important that you report to the office no later than the time specified in the notice. In fact, if you are not familiar with the office location, you should plan to allow yourself some extra time traveling to the office to compensate for weather, traffic or losing your way.

What goes on at an Appeal Tribunal Hearing? Testimony is taken under oath and tape recorded. The appeal is heard by the Appeal Tribunal, consisting of a hearing officer called the Chairperson. Both you and your employer will be given the opportunity to testify and to question each other in an orderly fashion. The Chairperson will then issue a new decision on your claim for Unemployment Compensation.

Evaluate and prepare your evidence: The Appeal Hearing is a “de novo” review which means that the Chairman reviews the case as if no prior decision had been made and the Chairman is not bound by earlier findings or determinations made by the NH Employment Security.

This will be your only opportunity to present your evidence (other than newly discovered evidence). Further appeals usually only review testimony and other evidence introduced at this hearing.

Regardless of who filed the appeal, you should prepare your case and be ready to submit your side of the story.

If you were fired, the employer has the “burden of proof” to show that you were fired for misconduct connected with the work. Remember, you are not required to prove the employer’s case by subpoenaing witnesses adverse to you. If an employer’s witness said something negative about you to the Certifying Officer, a subpoena to this witness will usually only damage your case more by providing direct sworn testimony of the allegations. You may wish to review your personnel file to see if there are any disciplinary warnings or other personnel actions taken against you that you need to become familiar with prior to the hearing.

What has the employer told NH Employment Security (NHES)? You may wish to see NHES’s records prior to the hearing. A call to the Appeals Unit will enable you to see the department’s records or to obtain copies of them after an appeal has been filed.

If you quit your job, the “burden of proof” is on you to show that you had good cause attributable to your employer to leave your job. You must show that your

leaving work had something to do with your work and was a reasonable course of action to take when you consider all the circumstances. There may be other reasons for leaving one’s job which are not disqualifying such as leaving one’s job because of an offer of full-time work with another employer that “fell through”, or to escape domestic abuse. For clarification of these issues you may wish to contact the NH Employment Security Claims Representative.

If there are first hand witnesses that can verify your account of the facts, you should interview them prior to requesting a subpoena so that you know what they will say before they come to the hearing. A subpoena should generally be used only if the witness does not wish to come to the hearing of their own choice and you know their testimony will be favorable to your case.

If there are any employer records that are important to prove your case, they should be obtained prior to the hearing and brought to the hearing. Remember to have copies made for the employer and the Appeal Chairman.

Bring your documentation and witnesses to the hearing. It is very important that you stay focused on the issue under appeal and be brief and accurate in presenting your case. The Appeal Chairperson is seeking only relevant information or information that bears directly on the issues that are being considered, including the credibility of witnesses and parties.

Because the Tribunal is not limited to discussion of just the issue under appeal, you should be prepared to discuss all issues that were in the determination under appeal. For instance, you have appealed a determination that said you were not available for full-time work and that your discharge was not for misconduct connected with the work. When the hearing is held, your employer appears prepared to discuss the issue of your termination and argues that it was for misconduct. You must be prepared to discuss this issue.

The Tribunal is required to determine all the issues relevant to the claim so that the case can be finished.

Your only opportunity: The Appeal Hearing is your only opportunity to fully present your case. All claim records are a part of the evidence and you have the right to review all records. Call the Appeals Unit for an appointment to review your records after an appeal has been filed.

The Importance of Witnesses & Subpoenas: Contact the Appeals Unit if you wish to have a witness subpoenaed. A subpoena may be issued by the Appeal Tribunal if the Chairperson determines a subpoena

is necessary and the testimony is relevant to the issues under appeal.

It is extremely important to have a witness or witnesses present. If witnesses with first hand knowledge are unable to attend the hearing on the scheduled date, it is best to request a postponement of the hearing.

If you cannot have a witness or witnesses present, and you do not want to request a postponement, the next best option to support your case is to have the witness(es) available by telephone. Telephone testimony may not be allowed where questions of credibility are at issue.

In the event you are unable to have a witness or witnesses participate in person or via telephone at the hearing, your next best option is to obtain a sworn (notarized) written statement from the witness or witnesses. While a sworn (notarized) statement carries more evidentiary weight than an unsworn statement, it is important for you to understand that statements, in general, are less persuasive and have less evidentiary weight than the direct testimony of witnesses at the hearing.

Some Tips: Prepare in advance. Make a list of your key points. Be sure to respond to all the issues raised in the determination under appeal.

Stay calm. Do not be defensive or aggressive. You are at the Hearing to present facts and to bring into question those facts presented by the other party. Your actions and conduct will be important factors to the Chairperson's assessment of the credibility of your testimony. If you were terminated for inappropriate conduct and you deny your conduct at the work site but display it for the Chairperson the hearing, your words generally mean less than your observed conduct.

Answer the Chairperson's questions as directly as possible.

The Chairperson will try to bring out the important and relevant facts in your case through questioning of the parties. You will be given an opportunity to question the employer's and your witnesses and you will be given time to tell the Chairperson other facts you believe are important.

During the Hearing: Make written notes of anything the employer says with which you disagree. This will help you to answer important points made by the employer, and help you to question the employer when it is your turn to speak.

Reading a prepared statement into the record of the hearing is merely providing hearsay testimony instead of direct first hand testimony as your statement

was probably prepared outside the hearing room. Hearsay testimony is admissible evidence but may be less believable or credible.

You may use your notes to refresh your memory.

Your questions to the employer can be an effective tool for:

- Uncovering inconsistencies or 'half truths' in the employer's testimony.
- Showing lack of credibility on the part of the employer or his witness.
- Clearing up aspects of the employer's testimony that you did not understand.

Enter exhibits: Any documents you wish to have entered into the record of the hearing should be presented to the Chairperson during your testimony. You should also furnish a copy for the other parties. Do not submit documents that have little or no bearing on the issues under appeal as they simply divert the Chairperson's attention, may cause an objection by the employer or simply make the record more difficult to review. In other words, it will not help your case.

Important information: You should make every attempt to attend the scheduled Appeal Hearing. Either party may request a postponement, but the postponement must be for good cause. If the employer has been granted a postponement and now you wish to have one, good cause is not "because the employer had a postponement." Good cause is determined by the Chairperson. Generally the supervising Appeal Chairperson makes the decision on a case by case basis. If you wish to have a postponement, you should immediately call the Appeal Unit to request one.

If you miss a hearing for good cause, you may request to have the hearing rescheduled. Your request should be made in writing to the Commissioner. If you do not have good cause, your hearing will not be rescheduled.

Will you be permitted to talk to the Chairperson before the Hearing? No. The Chairperson generally will have no contact with you or any party outside of the hearing. This is to avoid the appearance of unfairness or of accepting evidence outside the hearing. Other members of the Appeals Unit will advise or assist you with procedural questions.

In the State of New Hampshire, Appeal Hearings are **CONFIDENTIAL** and are not open to the public.

Withdrawal of an Appeal: If you wish to withdraw your appeal, you must do so in writing. You should notify

the Appeals Unit as soon as possible prior to the date of the hearing.

If your employer has filed the appeal, you cannot withdraw the appeal and the hearing will take place. If the appeal is withdrawn, the Certifying Officer's determination becomes final and cannot be changed.

Telephone Hearings: Most appeal hearings are conducted in the department's local offices and are "in person" hearings.

For an interstate claim, the appeal is conducted over the telephone and is conducted much the same as the in person hearing. You will be given a telephone number to call on a specific day and time. This information is on the *Notice of Appeal Hearing* form. When you call the tribunal, the Chairperson will then call your employer.

Two Important Points for Telephone Hearings: Have all witnesses available at ONE location.

Mail or Fax (603-656-6579) any documents you want to have considered as evidence in the Hearing to the Appeals Unit and your employer so that they can be entered into the record. Do this immediately upon receipt of the Notice of Hearing. The documents must be received prior to the hearing date.

Shortly after the hearing is concluded, you and your employer will receive the decision of the Tribunal by certified mail.

Summary

- Read all forms and documents sent to you by the Appeals unit.
- Be prepared and well organized.
- Bring witnesses to the hearing that support your testimony.
- Bring pertinent and relevant documentation.

What can you do if you feel the decision reached by the Chairperson is unjustified? You may appeal the decision to the Commissioner. Your appeal must be received in the Commissioner's office or postmarked within fourteen (14) calendar days of the mailing date of the Appeal decision. Read the instructions on the reverse of the Appeal decision for further details on filing an appeal. This second step is called a "Request for a Reopening."

For more information: Contact the Appeals Unit at PO Box 9505, 300 Hanover Street, Manchester, New Hampshire 03108-9505 or call 603-656-6644. Fax 603-656-6579. Visit our Web Site at www.nhes.state.nh.us

The Appeal Tribunal Hearing A Claimant's Guide



Important Notice

In order to maintain New Hampshire's Unemployment Compensation grant from the U.S. Dept. of Labor, the Appeal Tribunal is required to meet strict timeliness regulations. Postponements should be requested within 48 hours of receipt of the *Notice of Hearing* included with this brochure.

Employment
SECURITY

NHES is a proud member of America's Workforce Network and NH WORKS.

NHES is an Equal Opportunity Employer and complies with the Americans with Disabilities Act. Auxiliary aids and services are available upon request of individuals with disabilities.
TTY ACCESS: RELAY NH 1-800-735-2964.